

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: James Thompson et al.
Serial No.: 09/767,374
Filing Date: January 22, 2001
Group Art Unit: 2452
Confirm: 2543
Examiner: Dohm Chankong
Title: *DISTRIBUTED NETWORK COMMUNICATION
SYSTEM WHICH ALLOWS MULTIPLE WIRELESS
SERVICE PROVIDERS TO SHARE A COMMON
NETWORK INFRASTRUCTURE*

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("*Request*") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("*OG Notice*"). Under the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

REMARKS

As of a Office Action dated November 12, 2010 ("*Office Action*"), Claims 146-166, 168-172, 174-177, 179-221, 256-274, 276-279, and 286-301 and 303-311 stand rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent 6,847,620 to Meier ("*Meier*") in view of U.S. Patent Publication 2002/0019875 to Garrett et al, ("*Garrett*"), and further in view of U.S. Patent 7,197,556 to Short et al, ("*Short*"). Claim 191 stands rejected under 35 U.S.C. 103(a) as allegedly unpatentable over *Meier*, *Garrett* and *Short*, as applied above, and further in view of IEEE Std 802.11-1997, ("*IEEE*"). Claim 211 stands rejected under 35 U.S.C. 103(a) as allegedly unpatentable over *Meier*, *Garrett* and *Short*, as applied above, and further in view of admitted prior art ("*APA*"). Claims 302-311 stand rejected under 35 U.S.C. 103(a) as allegedly unpatentable over *Meier*, *Garrett*, *Short*, and in further view of U.S. Patent 6,677,894 to Sheynblat ("*Sheynblat*").

Because the rejections of the claims are improper on clear legal and factual grounds, Applicants request that the Pre-Appeal Board instruct the Examiner to issue a Notice of Allowance for these claims.

I. The Pending Claims are Allowable over the Cited References

A. The cited references do not teach or suggest "a geographic location of the portable wireless computing device"

Among other aspects, the cited references do not teach or suggest, "the first access point determining a geographic location of the portable wireless computing device," as Claim 146 recites. As teaching these claimed concepts, the *Office Action* points to column 6, lines 58-61 and column 9, lines 42-45 of *Short*. The cited portion, among other things, describes a "network system . . . grant[ing] network access to a specific location (e.g. a hotel room, a specific apartment address, etc) **rather than a specific user or host residing at the location.**" *Short*, col. 6, ll. 58-61 (emphasis added). *Short* further discloses "configuration upon **initial installation** to accommodate location-based identification" by "configuring the gateway so that VLAN ID's are assigned to individual entities or ports (i.e. room numbers, apartment, units, etc.)" *Id.* at col. 9, ll. 38-45 (emphasis added). For example, "[a]dding a port-assignment to the gateway device database may involve assigning a port number,

assigning a location to the port number and a conditional state for this port-location.” *Id.* at col. 9, ll. 47-50.

While *Short* appears to disclose port-location mappings and granting access to specific ports which are tied to particular locations, *Short* does not teach or suggest, “determining a **geographic location of the portable wireless computing device**,” as required by the claim. Notably, *Short* does not disclose any location of a “portable **wireless** computing device.” In fact, *Short* teaches away from determining or using “the geographic location of [any] portable [] computing device,” much less a wireless one. Instead, *Short* teaches granting network access based on the **location of the port**, regardless of any location of a computing device. Indeed, network access may be granted during “initial installation” before any device is ever connected to the port. *See id.* at col. 9, ll. 38-45. In other words, the geographic location of the device is irrelevant to the operation of *Short*—*Short* merely uses the port mappings to provide network access. Therefore, *Short* fails to teach or suggest, “the first access point determining a geographic location of the portable wireless computing device,” let alone “the first access point selectively providing network access to the portable wireless computing device based on the determined geographic location of the portable wireless computing device.” Accordingly, Claim 146 and its respective dependent claims are allowable.

Independent Claims 174, 177, 202, 256 and 286-289 include limitations that, for substantially similar reasons are not taught or suggested by the various proposed combinations of the cited references. Accordingly, Claims 146, 174, 177, 202, 256 and 286-289 and their respective dependent claims are allowable.

B. The cited references do not teach or suggest “receiving GPS data from the portable wireless computing device in order to determine the geographic location of the portable wireless computing device”

In addition to the reasons above for allowing Claims 303-311, the cited references do not teach or suggest “receiving Global Positioning System (GPS) data from the portable wireless computing device in order to determine the geographic location of the portable wireless computing device,” as these dependent claims require. *See, e.g.*, Claim 303. As teaching these claimed aspects, the *Office Action* points to Figure 1, items 9, 12a-12d,

column 4, lines 33-61, column 18, line 55 and column 20, lines 23-28 of *Sheynblat*. *Office Action*, p. 33. Applicants respectfully submit that it is improper to combine *Sheynblat* with *Meier*, *Garret*, and *Short*. While *Sheynblat* appears to teach the use of “mobile GPS receivers,” *Short* teaches away from location based identification tied to a specific user or host residing at a location. Instead, as discussed above, *Short* teaches “grant[ing] network access to specific location [using a port-location mapping] . . . **rather than [using] a specific user or host residing at the location.**” *Short*, col. 6, ll. 58-61. Moreover, modifying *Short* to use GPS data from the portable device changes the principle of operation of *Short*'s disclosure, which is directed to facilitating location-based network management using port-location mappings. Since the proposed modification to *Short* would change its principle of operation, *Sheynblat*'s disclosure is insufficient to render the claims *prima facie* obvious. See MPEP 2143.01. VI (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). For these additional reasons, Claims 303-311 are allowable.

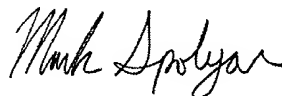
CONCLUSION

As the rejections of Claims 146-166, 168-172, 174-177, 179-221, 256-274, 276-279, and 286-301 and 303-311 contain clear legal and factual deficiencies, Applicants respectfully request the Pre-Appeal Board to direct the Examiner to issue a Notice of Allowance for these claims.

If a telephone conference would advance prosecution of this Application, the Examiner may call Mark J. Spolyar, Attorney for Applicant, at 650-739-7511.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any extra fees and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants



Mark J. Spolyar
Reg. No. 42,164

Date: February 11, 2011

Customer Number: 05073